U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship and Immigration Services

[redacted]

PUBLIC COPY

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: FEB 11 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen daughter. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his U.S. citizen daughter and lawful permanent resident spouse in the United States.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family members. The application was denied accordingly. *See District Director's Decision* dated May 5, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) improperly denied the waiver application since the first notice of intent to deny cited improper law and facts. The District Director issued a new letter of intent to deny dated February 27, 2003 in which the proper law and facts were cited. Additionally counsel states that the adverse facts do not apply to the applicant and that he is eligible to adjust status under section 245(c) of the Act. In addition, counsel asserts that arrests that do not lead to conviction and unauthorized employment cannot be considered contrary to the waiver adjudication. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for his conviction of a crime involving moral turpitude. The conviction and the applicant's inadmissibility are not disputed by counsel. The waiver application was adjudicated based on section 212(h)(1)(B) of the Act, and although all his arrests, including those that were dismissed, were mentioned in the denial letter, they were not taken into consideration during waiver adjudication. Counsel's allegation that the improper section of the law was used in the adjudication of the waiver application will not be considered.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
> >
> > . . . .

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on February 21, 1997, the applicant was convicted by the Essex County Superior Court of New Jersey of a crime involving moral turpitude (Fourth Degree Criminal Sexual Contact) and sentenced to two years probation.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's spouse is a lawful permanent resident of the United States and therefore the applicant must demonstrate extreme hardship to his U.S. citizen daughter and/or to his spouse.

On appeal, counsel requested an additional 30 days in which to present a new brief or new evidence to show that extreme hardship would be imposed upon the applicant's qualifying family members. It has been over six months and no new evidence has been added to the record. The decision will therefore be made based on the record as it currently stands. In a brief previously submitted to the Newark, New Jersey office counsel asserts that the applicant's spouse would suffer extreme hardship because she would not be able to meet the mortgage payments for the house owned by the applicant and that she will not be able to provide medical treatment for one of their children who had an eye operation several years ago if the applicant's waiver application is not approved. No documentation was provided regarding the medical condition of the child and no documentary evidence was submitted to show if the child's condition couldn't be treated overseas. The record does not mention any hardship that would be imposed on the applicant's U.S. citizen daughter if he were forced to depart the United States. Nor was any documentation provided to substantiate the claim of financial hardship to the applicant's wife.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen daughter or lawful permanent resident spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.